(4) But a person whose claim came into existence *after* such registration may sue either within three years of the registration or even later provided he sues within the time limited by the Limitation Ordinance.

To my mind the main object of paragraph (a) is to shorten the period during which a possessory title remains only provisional.

I see nothing in it to suggest that the legislature intends that a person whose claim existed prior to the registration of the possessory title and who has unsuccessfully tried to establish his claim before the D.O., should have appealed to the High Court and that if he failed to do so he is precluded from pursuing it by bringing fresh proceedings, namely, by suing in the High Court. The legislature could have debarred him if it had wanted to, but it has not done so, and in the absence of clear words it cannot be assumed that he is deprived of his right of access to the courts. I think that the language of the Ordinance allows an aggrieved party two alternative remedies: he can proceed —

(a) by way of appeal under section 16 or

(b) by way of the institution of fresh proceedings either under section 10 or, in the case of a person whose claim did not exist prior to the registration of the possessory title, otherwise;

and if he fails by way of appeal or if he declines to appeal, he may sue in the High Court.

With respect I am unable to agree with the learned trial judge; on the contrary I agree with Mr. Gomez for the appellants and with Datuk Idris bin Yusof the learned Legal Adviser who appears as *amicus curiae* that the learned trial judge has jurisdiction to hear this suit and if the plaintiffs had *locus standi* the judge could and should have come to definite findings of facts on the evidence instead of ordering the plaintiffs to start afresh.

Hashim J. has held in *Wok* v. *Fatimah*[4] that a person who has unsuccessfully appeared before the D.O. and again on appeal in the High Court, may nevertheless sue for title in the High Court. He rejected the argument that as the plaintiff there had gone through all the steps in the Ordinance the matter was *res judicata* and she could not sue. Hashim J. gave this reason as follows:

"My interpretation of this Ordinance is that all the land officer can do is to give a possessory title to the person who is in possession of the land at the time of the enquiry."

With respect I agree with his conclusion, but not with his reason. As already stated, in my view the enquiry officer has power to decide on title, as is clear from section 7. This case came on appeal to this court, see *Fatimah* v. *Wok*,[5] but it would appear that the defence of *res judicata* was not pursued on appeal; nevertheless, I agree that a person such as the plaintiffs in the instant case can sue in the High Court.

In *Mat'ail* v. *Mek*,[6] respondent was proprietor in possession and was on appeal given by the D.O. ordinary title in accordance with section 7 and appellant appealed to the High Court. In dismissing the appeal (in my respectful view correctly) Hepworth J. said that that did not mean that the "appellant is or was necessarily without remedy. It merely means that in the circumstances which exist in this case the Ordinance is of no use to him." Therefore, the judge added, the dismissal of the appeal was to be without prejudice to any further proceedings which the appellant might be advised to take. It is quite clear that the judge meant that the appellant there could bring a suit to assail the respondent's title in accordance with the Kelantan Land Enactment provision dealing with the indefeasibility of title now contained in section 340 of the National Land Code. Hepworth J. was, however, dealing with an order under section 7, but I am of the opinion that the same is true of challenges to the validity of orders under section 8: a person who has failed in an appeal under section 16 may nevertheless bring fresh proceedings.

The learned judge should not also have ordered the Commissioner of Lands to be joined as a party. It is for plaintiffs to decide whether or not a land officer should be joined as a co-defendant. They may not want to do so, because they may consider that their quarrel is with another, not with him, that he has acted *bona fide* in the exercise of his power as a public officer and that even if they were to win against the main defendant they might lose against the land officer whose costs they may then be ordered to pay, a risk which they do not wish to run.

I would therefore have allowed this appeal.

As however I am in a minority, the order of the court is that this appeal be dismissed, that the order directing the action to be started *de novo* be set aside and that there be substituted for it an order that the action be dismissed.

As regards costs, the appellants and the respondent's personal representative all appeared before us in *forma pauperis*, and in the circumstances we agree that there shall be no order as to costs.

Appeal dismissed.

Solicitors: *Mohamed Yaacob & Gomez.*

DATUK SYED KECHIK BIN SYED MOHAMED v. DATUK YEH PAO TZU & ORS.

[O.C.J. (Yusoff J.) September 9, 1975]
[Kota Kinabalu — Notices of Motion Nos. 460 and 461 of 1975]

Practice and Procedure — Libel — Application for interlocutory injunctions to restrain defendants from further printing, circulating or otherwise publishing the alleged libels.

The plaintiff in these actions applied for interlocutory orders to restrain the defendants their servants and agents and each of them from further writing, printing or circulating or otherwise publishing libels on the plaintiff by caricatures contained in issues of the newspaper owned by the defendants or any similar words or caricatures defamatory of the plaintiff in his offices or otherwise until the trial of this action.

Held: the balance of convenience in this case lay in favour of granting the interlocutory relief sought by the plaintiff.

Cases referred to:-

(1) *Quartz Hill Consolidated Gold Mining Co.* v. *Beall* (1881) L.R. 20 Ch. D. 501.

(2) *Tolley* v. *J.S. Fry & Sons Ltd.* [1931] A.C. 333.
(3) *Monson* v. *Tussauds* [1894] 1 Q.B. 671, 685.
(4) *Stratford* v. *Lindley* [1965] A.C. 269.
(5) *American Cyanamid Co.* v. *Ethicon Ltd.* [1975] 1 All E.R. 504.
(6) *Fellowes* v. *Fisher* [1975] 2 All E.R. 829.

NOTICES OF MOTION.

Peter Mooney (*W.K. Loo* with him) for the plaintiff.

Nicholas Fung for the defendants.

Yusoff J.: Both these motions are for interlocutory injunctions arising from two libel actions filed by the same plaintiff, Senator Datuk Syed Kechik bin Syed Mohamed, a member of the House of Senate and an advocate and solicitor of this Court. On the relevant date he held various political and public offices in Sabah particularly, as director and chief executive of the Sabah Foundation (Foundation) since its inception in 1967, and the Foundation's group of companies. He was also a co-trustee of a Trust known as Amanah Tun Datu Haji Mustapha, established by the Foundation, which Trust was responsible for the distribution of cash benefits to its beneficiaries comprising the whole adult citizens of the State of Sabah.

In the first action, the defendants are Datuk Yeh Pao Tzu and two others, who at the relevant time, were the publisher, editor and printer of a daily newspaper called Overseas Chinese Daily News (OCDN); and in the second action, the same defendants are sued except the editor is also cited as publisher and printer of another daily newspaper called the Daily Express. Both newspapers were then widely circulated and distributed in Kota Kinabalu and elsewhere in the State of Sabah.

Both writs are endorsed with a claim for injunctions to restrain the defendants and each of them "from further printing, publishing or circulating or causing to be printed, published or circulated of the plaintiff the said or any similar libels". The plaintiff also claims for general damages.

The first action alleged that the libel arose from two publications in OCDN:

i) a caricature published in its issue dated the 29th of July 1975 depicting the plaintiff as a horse being ridden by someone appearing to be Tun Datu Haji Mustapha and with dollar notes jutting out of the horse's hip-pocket; and

ii) a caricature entitled "The Magic Door" published in its issue dated 11th of August 1975 showing two doors; one labelled as 'Sabah 1967' depicting the plaintiff entering this door while holding some papers and an empty brief-case in his hand and the word "$" written on the sole of his shoe; and another door labelled 'Sabah 1975' depicting the plaintiff as leaving the door while carrying a similar brief-case containing money, together with some timber logs in his arm and the word "$" written on the sole of his shoe;

In the second action, the alleged libels arose from five publications in Daily Express, some of which were repetitions of the same caricatures in different issues of the newspapers. These were: —

i) In the 29th of July issue, the same caricature depicting the plaintiff as a horse, as in OCDN, but with a caption underneath "Allah Mak! Kuda 'Kechil' Aku Sudah Tidak Lari Laju";

ii) the 31st of July issue showing a caricature with a caption "THE $60 BONE: A — MANAH?" depicting what appeared to be Tun Datu Haji Mustapha and the plaintiff sitting at a table, having a meal from a big fish, while a long queue of people waiting for them and one person at the frontmost of the queue receiving a small bone from the plaintiff;

iii) the 15th of August issue repeating "The Magic Door" caricature from the OCDN, both in the English and Malay sections of the newspaper but double in their sizes;

iv) the 12th of August issue showing another caricature with the caption "A Risen Star Rising Higher?" depicting the plaintiff jumping from a money-tree grown from the map of Sabah to catch a half moon. The plaintiff was stepping on a star at the top of the tree and while doing so, his satchel containing dollar notes spilled behind him. The caricature also appeared in the Malay section of the newspaper of the same date; and

v) the 13th of August issue, the caricature entitled "A Risen Star Rising Higher?" was again repeated in the Malay section of the same newspaper.

In both the writs, the plaintiff claims that in all these publications "the defendants intended to degrade or to disparage him and to expose him to public hatred, contempt and ridicule and in doing so he has been greatly injured in his credit and reputation, in his business and in his office as director and chief executive of Sabah Foundation and co-trustee of the Trust "Amanah Tun Datu Haji Mustapha" and has suffered damages thereby."

In the ex-parte notices of motions filed on behalf of the plaintiff, he prayed for interlocutory injunctions until trial of the actions, restraining the defendants in both the actions from further printing, circulating or otherwise publishing the alleged libels against him. The affidavits in support of the motions were substantially in the same terms as the statement of claims.

In his affidavit sworn on the 29th of August 1975, in respect of OCDN, the plaintiff states that the caricature Exhibit: SK1, depicting him as a horse was highly libellous of him; that though there were no words appearing under the caricature in OCDN, but the fact that similar caricature published in Daily Express on the same day with the words "Allah Mak! Kuda 'Kechil' Aku Sudah Tidak Lari Laju." (meaning "Oh God! My horse 'Kechil' is not running fast anymore"), clearly refers to him, as his name is 'Kechik'; that the caricature refers to him as director of Sabah Foundation and the rider refers to Tun Datu Haji Mustapha, chairman of the Foundation; that the caricature imputes that he had become a stooge or errand-boy of the chairman; and that the dollar notes imputes that he had unlawfully amassed fortune from the Foundation while holding its office.

In respect of the caricature entitled "The Magic Door" Exhibit: SK2, the plaintiff states that this magic door refers to Sabah Foundation; that the person depicted to enter the 1967 door was him, as he was made director and chief executive of the Foundation

in that year; that it imputes that at that time he was a poor man as indicated by the word '¢' appearing on the sole of his shoe; that the person depicted leaving the 1975 door refers to him, as this coincided with his public announcement to leave the Foundation in that year; that the caricature imputes that while he was the chief executive of the Foundation he had amassed fortune unlawfully for himself as indicated by dollar notes falling out from his coat and his briefcase, and the word '$' written on the sole of his shoe.

In his affidavit also sworn on the 29th of August 1975 in respect of Daily Express, relating to the caricature published in the newspaper, depicting him as a horse, Exhibit SK1/DE, the plaintiff repeats the innuendoes intended by the defendants as stated in his earlier affidavit relating to OCDN.

Referring to the caricature entitled "The $60 Bone: A-Manah?" Exhibit SK2/DE, the plaintiff states that the caricature refers to him as co-trustee of the Trust known as "Amanah Tun Datu Haji Mustapha" with the other co-trustee, Tun Datu Haji Mustapha, sitting at other end of the table; that the $60 refers to the dividend distributed by the Trust to each of its beneficiary during 1973 and 1974; that the caricature imputes that he had cheated the public and committed breach of trust by enjoying the benefits of the Trust for himself and the other co-trustee while distributing only small sums of money to the beneficiaries.

In referring to the caricature entitled "The Magic Door" published in both the English and Malay sections of the newspaper, which were repetitions of similar publication in OCDN of 11th of August 1975, the plaintiff repeats the innuendoes intended by the defendants as stated in his earlier affidavit.

In dealing with another caricature entitled "A Risen Star Rising Higher?", Exhibit SK4/DE and repeatedly published in the same newspaper the next day Exhibit SK4(B)/DE, the plaintiff states that the title without the question mark was quoted from an article in the Malaysian Business magazine issued in July 1975 which article was then entitled "Datuk Syed Kechik opts for business"; that the caricature imputes that he was running away from Sabah for the moon with all the money he had unlawfully made in Sabah.

In both these affidavits the plaintiff states that each and every one of the caricatures published in the newspapers refers to him; that they were highly libellous, unjustified and calculated to disparage his reputation as director and chief executive of Sabah Foundation and its group of companies and as co-trustee of the Trust established by the Foundation; that by repeated publications in both of the newspapers of those caricatures he believed that the defendants intended to continue their publications; and that these would cause immediate, serious and irreparable injury to his reputation.

At the hearing of these applications in Chambers on the 30th of August, 1975, I directed that both applications be consolidated for convenience; and that motions be adjourned to open court for argument on the 9th of September, 1975. I also ordered that the notices of these motions be served on the defendants.

Between those dates the plaintiff made further affidavit stating that because of these repeated publications of caricatures of him in both the newspapers he had reason to apprehend that the publications would continue and as such immediate and pressing injury to him was threatened. In that event his counsel wrote to the defendants @ Exhibit SK3, demanding a full and unqualified apology for and withdrawal of the imputations contained in those caricatures. To this letter, the 1st defendant replied that his solicitors would give a suitable answer to them — Exhibit SK4.

On the 8th of September the plaintiff made further affidavits stating that the proceedings in the court on the 30th of August, 1975 was reported in Kinabalu Sabah Times in its issue of 2nd September, 1975 — Exhibit SK1/KST. But inspite of this the OCDN dated the 6th of September, 1975 continued to publish an article concerning him entitled "Sabah Chinese Association lost all face!" — Exhibit SK5. Its translation is reproduced hereunder — Exhibit SK6: —

"Is it to be said the Secretary-General of Sabah Chinese Association is merely a piece of rotten material which cannot be admitted into high society? Then, Syed Kechik, apart from being good in grabbing and can gang up with Tun Mustapha in stinking business, what sort of a piece of material is he?

Having studied a few years of law, practised as a lawyer, that cannot scare people! Like the stupid path he has recently taken, if he were to open a law firm in Peninsular Malaysia, at the best is to slap flies during leisure time!"

In this regard the plaintiff states that the article alleged that the Secretary-General of Sabah Chinese Association had been removed from his seat as a nominated member of the Sabah State Legislative Assembly and replaced by him, which was not true; that the article was highly defamatory of him in his office as director of Sabah Foundation and his profession as a legal practitioner in this court.

Also on the 8th of September, 1975 the plaintiff made another affidavit giving particulars of the assets and interests of the Sabah Foundation and his status and responsibilities in relation to this Foundation. It is sufficient to state that the Foundation was at the time, the largest statutory body created by any State Government in Malaysia and that it had varied interests in industries and social-economic activities both in and outside Sabah; that its income was chanelled to a Trust Fund created by the Foundation and dividends yearly declared were distributed to about 260,000 people who were 21 years of age or above in Sabah; and that the plaintiff has gained reputation, especially abroad, in his success in managing the Foundation.

In stating his responsibilities towards the Foundation as its executive head, the plaintiff states that:

"All this involves a very considerable amount of time and effort on the part of the director. It takes up most of my time and takes up the major part of the work of my private office. I received an honorarium of $1,250 per month plus $500 per month from each of three wholly-owned companies. I formerly charged some although never all expenses but for the last few years received nothing by way of expenses (apart from one or two instances a year of travelling expenses). My office expenses incurred in the service of the Foundation exceed the sums received by way of honorarium."

During argument of the motion in open court on the 9th of September, 1975, counsel for the defendant

argued that no libels or innuendoes capable of defamatory meaning of the plaintiff had been established from the alleged publications of the cartoons in the defendant's newspapers in the absence of words published together with these pictures. He further argued that if there had been such libels or innuendoes, the defendants would swear and answer that there was justification. He referred to *Quarts Hill Consolidated Gold Mining Company* v. *Beall*[1] as his authority on that proposition.

In my view, *Quarts Hill's* case is not in point. That case discussed the question of whether the court has jurisdiction to interfere on an interlocutory application to restrain the publication of a libel, which the court held in the affirmative. The case in point, in my view, is *Toliey* v. *J.S. Fry & Sons Limited*[2] where the defendant's firm issued as an advertisement, a caricature of the plaintiff, a prominent amateur golfer, depicting him as playing golf with a packet of the defendant's chocolate protruding from his pocket. The advertisement was published without the knowledge and consent of the plaintiff. By his statement of claim the plaintiff alleged *inter alia,* that the defendant meant that he had prostituted his reputation as an amateur golfer for advertising purposes; that he had done so for gain or reward. In the majority decision of the House on whether such innuendo was capable of defamatory meaning, Viscount Hailsham at p. 338 said: —

"The case is unusual in that the defamatory innuendo does not depend upon the words used of the plaintiff, but solely upon the circumstances in which the publication takes place. The argument for the defendant was that there was no evidence called to prove that well known persons were in the habit of allowing their names to be used for advertising purposes, . . .

My lords, I gravely doubt whether any such evidence was necessary. The question here does not depend upon a state of fact known only to some special class of the community, but upon the inference which would be drawn by the ordinary man or woman from the facts of the publication."

And in the same case Lord Buckmaster has this to say, in respect of innuendo, at p. 334: —

"If one man calls another a thief without more it might be mere vulgar abuse and not actionable, but if there are circumstances from which it might properly be inferred that, goods having been stolen, the man of whom the words were spoken was pointed to as the thief, the words at once became actionable."

In the present case the publications on which the defamatory innuendo is to be construed does not depend on an isolated publication in respect of the plaintiff. There have been a series of publications in both the OCDN and the Daily Express of different caricatures regarding the plaintiff, some of them were repetitions of earlier caricatures and some with captions added which when construed together are definitely capable of defamatory meanings of the plaintiff. These publications as the dates on the issues of the newspapers indicate have been repeatedly published over a period of weeks. These circumstances, in my view, would give rise to the inference which could be drawn by the ordinary man or woman that the plaintiff, of whom the caricatures and the words published of him was pointed to as a stooge, dishonest and untrustworthy. Under these circumstances, in my view, there is a serious question to be tried whether these publications were defamatory of the plaintiff and an actionable wrong has been done to him.

On the argument by the defendant's counsel that if there had been such innuendo, there was justification in the publications thereof, I am of the opinion that this argument was designed to delay the proceedings only. There was no affidavit filed by the defendant raising this defence. In any event, in order to justify the innuendo it is not sufficient to prove that the words published by the defendants were true or that the caricatures they represented were justifiable; the circumstances of time or place may raise inferences as will render either of them libellous. See *Monson* v. *Tussauds.*[3]

In the instant case having regard to the circumstances that such publications were repeatedly published for a period of more than two weeks by both the newspapers, the OCDN and the Daily Express, concerning the plaintiff, it would be sufficient, in my opinion, to raise an inference as will render them libellous. The *Quartz Hill* case[1] referred to by the defendant's counsel is not a case mainly deciding on the issue of justification. In that case, the injunction in a libel action was dissolved partly on the ground that the party's affidavit did not comply with Order XXXIII, Rule 3 of the English Rules of Supreme Court. This is not the case here.

The defendant's counsel further argued that there was no urgency in the present case and that injunction could only be issued in clearest cases where there is libel. In this aspect I failed to agree with the defendant's counsel for supposing that the circumstances were not urgent and further publication against the plaintiff was not imminent. From the affidavit of the plaintiff, there is reason for believing that these publications would be repeated which, in fact, have been repeated during the intervening period of this trial. That being the case and without an undertaking from the defendant's counsel that repetitions would not recur, the situation, in my view, were imminent and urgent.

On the defendant's counsels argument that injunction would issue only in clearest cases Lord Halsbury in *Monson* v. *Tussauds Limited*[3] has this to say at p. 689: —

". . . I cheerfully accept the proposition, that the Court ought not to interfere by interlocutory injunction unless it was 'a clear case'. Different forms of expression are used by different Judges to indicate the degree of clearness which ought to be brought home to the mind of a judge before he exercises the power now in question. But it is a canon of construction too familiar to render more than an allusion to it necessary, that expression however general and phrases however wide are cut down and qualified by the subject-matter with respect to which they are uttered. . . ."

The degree of clearness in each case as the above decision indicates depends on the facts and the subject-matter with respect to which they were uttered. In the present case, the facts clearly show that the publications concerning the plaintiff were defamatory unprecedented and "a case of atrocious libel wholly unjustified and inflicting the most serious injury on the plaintiff" — See *Quartz Hill* case[1] at p. 508. In view of these facts, I should think this was a clear

case of libel which justifies the Court to interfere promptly.

The principle of law governing application for interlocutory injunction laid down in *Stratford* v. *Lindley*[4] has now been superseded by the recent decision of the House of Lords in *American Cyanamid Co.* v. *Ethicon Ltd.*[5] According to the latter case, the question is no longer whether the plaintiff has made out a *prima facie* case but, whether there is a serious question to be tried. If there is, the *status quo* must be preserved. Lord Diplock in delivering judgment of the House in that case said — p. 510: —

"The use of such expressions as 'prohibitory,' 'a *prima facie* case' or 'a strong *prima facie* case' in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried." "It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."

The procedure in the application of the principle in *American Cyanamid's case*[5] is fairly summarised by Sir John Pennycuick in *Fellowes* v. *Fisher*[6] at p. 843 as follows: —

"(1) Provided that the court is satisfied that there is a serious question to be tried, there is no rule that the party seeking an interlocutory injunction must show a *prima facie* case.

(2) The court must consider whether the balance of convenience lies in favour of granting or refusing interlocutory relief.

(3) 'As to that' the court should first consider whether, if the plaintiff succeeds, he would be adequately compensated by damages for the loss sustained between the application and the trial, in which case no interlocutory injunction should normally be granted.

(4) If damages would not provide an adequate remedy the court should then consider whether if the plaintiff fails the defendant would be adequately compensated under the plaintiff's undertaking in damages, in which case there would be no reason on this ground to refuse an interlocutory injunction.

(5) Then one goes on to consider all other matters relevant to the balance of convenience, an important factor in the balance, should this otherwise be even, being preservation of the status quo. By the expression 'status quo' I understand to be meant the position prevailing when the defendant embarked on the activity sought to be restrained. Different considerations might apply if the plaintiff delays unduly his application for relief.

(6) Finally, and apparently only when the balance still appears even, 'it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence."

In the present case, I have earlier expressed my view that the affidavits filed by the plaintiff disclosed a clear case of libel. There was therefore, a serious question to be tried and to justify the court's interference there must be that consideration of whether the balance of convenience lies in favour of granting or refusing interlocutory relief. In considering where this balance lies in this case, the first question to be asked is, if the plaintiff succeeds at the trial would he be adequately compensated by damages for any loss caused by the refusal to grant this relief? In my belief if these publications were repeatedly published by the defendants which they have done even during the interval of this proceeding, they may cause greater injury to the plaintiff's name and profession and if at the trial of the action the plaintiff's denial were to be true and the defendant's allegation were proved to be false, an irreparable injury would have been done to the plaintiff. Damages for this injury, in my belief, would not be an adequate remedy to the plaintiff.

The next question is whether the defendants would be adequately compensated under the plaintiff's undertaking as to damages. In my view, if this injunction is granted, it will not prevent the defendants from making other legitimate statements or publications against the plaintiff; it will only prevent them from repeating these particular allegations in which the injunction is sought. Even if at the trial of the action the defendants should be able to adduce evidence showing that the plaintiff's denial of those allegation were untrue, it is impossible to believe that the defendants would suffer damages by being restrained meanwhile from repeating those allegations.

From these factors it would appear that the balance of convenience lies in favour of granting the interlocutory relief sought by the plaintiff. In my judgment, both motions should therefore be granted.

I order that both motions granted in terms until trial or further order. Cost to be in the cause.

Motions granted.

PROBATE OFFICER, SARIKEI v. SIDANG ANAK UDIN & ORS.

[O.C.J. (Tan Chiaw Thong J.) August 19, 1976]

[Sibu — Originating Summons No. 28 of 1972]

Customary Law — Distribution of estate of Iban dying intestate — Punas inheritance — Distribution of "barang lama" and "barang bahru."

In this case the applicant applied for distribution of the estate of the late Penghulu Andok Anak Mut (deceased). The deceased left immoveable properties and a shot gun and other household belongings. He died *punas* without leaving issue and the persons who claimed shares in the inheritance were —

(a) the first respondent, his widow;

(b) the second and third respondents who claimed to be the lawful brothers of the deceased;

(c) the fourth respondent who claimed to be a natural son of the deceased;

(d) the fifth respondent who claimed to be an adopted daughter of the deceased.

The first respondent had two sons by her previous marriage which was dissolved according to Iban custom prior to her marriage to the deceased. On the facts the learned trial judge found that the fourth respondent was the natural son of the deceased and that the fifth respondent was the adopted daughter of the deceased. He also found that of the land belonging to the deceased, two parcels were "barang lama" that were acquired by him before his marriage to the first respondent and that two parcels were "barang bahru" that were acquired after the marriage. He further found that the shot gun and other household belongings were "barang bahru."

Held: (1) the two parcels of land, being barang lama, should be inherited by the fourth and fifth respondents, the natural and the adopted children of the deceased in equal shares;